IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

EXIT STRATEGY, LLC, Plaintiff, vs. EXIT STRATEGY, LLC, Defendant.	)	Civil Action No. 3:17-cv-175 **JURY TRIAL DEMANDED**

COMPLAINT

Exit Strategy, LLC ("Exit Strategy" or "Plaintiff"), by and through the undersigned counsel, and in support of this Complaint against Defendant Exit Strategy, LLC ("ES Aurora" or "Defendant"), does hereby allege and aver as follows:

NATURE OF THE ACTION

1. Plaintiff Exit Strategy brings this action for trademark infringement, false designation of origin and unfair competition pursuant to the Lanham Act, 15 U.S.C. § 1051, *et seq*.; for trademark and trade name infringement pursuant to N.C. Gen. Stat. § 80-1, *et seq*.; for breach of contract under North Carolina state law, and for unfair and deceptive trade practices under the laws of the State of North Carolina pursuant to N.C. Gen. Stat. § 75-1.1 *et seq*. arising from Defendant's unlawful conduct in knowingly and intentionally adopting a trademark that is identical, to Exit Strategy's trademarks and for breaching an agreement between the parties wherein Defendant agreed to cease all infringing use of Exit Strategy's trademarks.

PARTIES

2. Plaintiff Exit Strategy is a limited liability company organized and existing under the laws of North Carolina with its principal place of business located at 4215-B Stuart Andrew Boulevard, Charlotte, North Carolina, 28217.

3. Exit Strategy owns and operates entertainment facilities where customers test their puzzle-solving and problem solving skills in a timed environment in the form of "escape the room" type games.

4. Upon information and belief, Defendant is a limited liability company organized and existing under the laws of Illinois, with its principal place of business located at 4151 E. McCoy Drive, Suite 147, Aurora, Illinois, 60504.

5. Upon information and belief, Defendant also owns and operates entertainment facilities where customers test their puzzle-solving and problem solving skills in a timed environment in the form of "escape the room" type games.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b) because it arises under the Lanham Act, 15 U.S.C. § 1121(a), *et seq*.

7. This Court has jurisdiction over Plaintiff's claims under the laws of the State of North Carolina based upon principles of supplemental jurisdiction and in accordance with 28 U.S.C. § 1367(a), in that the state law claims under North Carolina are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative fact.

8. This Court has *in personam* jurisdiction over Plaintiff in that Exit Strategy is a limited liability company conducting business in this state and in this district and division.

9. This Court has *in personam* jurisdiction over Defendant, as Defendant is engaged in trademark infringement and unfair competition directed at and/or which caused damage to persons and entities residing in, located in, or doing business in the United States, including in the Western District of North Carolina; Defendant itself is engaged in substantial business activity within this State by its sales of tickets within this state through its website and through website www.groupon.com; and Defendant entered into an agreement with Plaintiff, for the benefit of Plaintiff, to cease infringement of Plaintiff's trademark within this state and outside of this state.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391 in that the defendant is an entity who is transacting business in this district and because a substantial part of the events giving rise to Exit Strategy's claims occurred in the Western District of North Carolina.

STATEMENT OF FACTS

11. Exit Strategy opened its first location in Charlotte, North Carolina, on August 28, 2014 as an entertainment facility where customers use problem-solving and puzzle-solving skills to escape various themed rooms in a timed environment.

12. Exit Strategy continues to expand its business and recently opened its second location.

13. Exit Strategy filed a federal trademark application on April 28, 2015 for "EXIT STRATEGY" in connection with entertainment in the nature of designing, arranging, organizing, conducting and hosting puzzle-solving and escape the room type games and providing facilities for recreational activities, namely, puzzle-solving and escape the room games. The mark was registered on the Principal Register of the United States Patent and Trademark Office

("Trademark Office") on December 22, 2015, as United States Trademark Registration No. 4,873,566 ("EXIT STRATEGY® Mark"). A copy of the registration is attached hereto as Exhibit 1.

14. At all times since August 28, 2014, Exit Strategy has used the EXIT STRATEGY® Mark in interstate commerce in connection with its entertainment services.

15. In addition to its EXIT STRATEGY® Mark, Exit Strategy also filed a federal trademark application on April 28, 2015 for EXIT STRATEGY + Design in connection with entertainment in the nature of designing, arranging, organizing, conducting and hosting puzzle-solving and escape the room type games and providing facilities for recreational activities, namely, puzzle-solving and escape the room games. The mark was registered on the Principal Register of the Trademark Office on December 22, 2015, as United States Trademark Registration No. 4,873,565 ("EXIT STRATEGY® Design Mark"). A copy of the registration is attached hereto as Exhibit 2.

16. Exit Strategy also owns a pending application for a North Carolina state trademark registration for the mark EXIT STRATEGY in connection with entertainment in the nature of designing, arranging, organizing, conducting and hosting puzzle-solving and escape the room type games and providing facilities for recreational activities, namely, puzzle-solving and escape the room games (collectively with the EXIT STRATEGY® Mark and the EXIT STRATEGY® Design Mark, the EXIT STRATEGY® Family of Marks). A copy of the application as submitted to the North Carolina Department of the Secretary of State is attached hereto as Exhibit 3.

17. Exit Strategy has continuously used its EXIT STRATEGY® Family of Marks on signage, flyers, print advertisements, internet advertisements, promotional items, and social media, among other things.

18. Upon information and belief, Defendant began advertising and offering services identical to Exit Strategy's services using Exit Strategy's EXIT STRATEGY® Mark ("Infringing Mark") on or about July 2016.

19. On or about September 2016, Exit Strategy learned that Defendant was advertising and offering services identical to Exit Strategy's services using the Infringing Mark by selling tickets through the website www.groupon.com, including to customers in North Carolina.

20. On or about September 2016, customers of Exit Strategy began presenting Defendant's tickets to Exit Strategy, purchased in North Carolina through the website www.groupon.com, confusing the tickets as tickets for Exit Strategy.

21. On September 14, 2016, Exit Strategy, through its counsel, sent a letter to Defendant demanding Defendant immediately cease and desist all infringing use of the EXIT STRATEGY® Mark.

22. Following two months of negotiation between the parties, the parties agreed in writing on November 13, 2016 that Defendant would cease all infringing use of the EXIT STRATEGY® Mark within four months, on or before March 13, 2017, and in consideration of this undertaking, Exit Strategy agreed not to pursue its claims of trademark infringement against Defendant ("Agreement").

23. Exit Strategy properly performed its obligations pursuant to the Agreement.

24. Upon information and belief, Defendant did not cease all infringing use of the EXIT STRATEGY® Mark on or before March 13, 2017. In violation of the parties' agreement, Defendant continues to infringe the EXIT STRATEGY® Mark on at least its website, signage, sales through www.groupon.com, and social media, including on Facebook and Yelp.

25. On March 13, 2017, Exit Strategy notified Defendant that Defendant was in breach of the parties' agreement and demanded Defendant immediately cease all infringing use of the EXIT STRATEGY® Mark. Defendant failed to comply.

26. Exit Strategy has expended substantial sums of money in advertising and publicizing the EXIT STRATEGY® Family of Marks which, together with the use of these marks, has resulted in the acquisition of substantial goodwill.

27. Upon information and belief, Exit Strategy's services and Defendant's services travel through the same or similar trade channels and are marketed to the same or similar types of customers.

28. Upon information and belief, Defendant adopted the Infringing Mark with actual knowledge of Exit Strategy's registrations and prior use of its EXIT STRATEGY® Family of Marks for the same or similar services.

29. Exit Strategy has experienced actual confusion between its EXIT STRATEGY® Family of Marks and Defendant's Infringing Mark. Customers of Exit Strategy have presented Defendant's tickets to Exit Strategy, purchased in North Carolina through the website www.groupon.com, confusing the tickets as tickets for Exit Strategy.

COUNT I – Federal Trademark Infringement and Unfair Competition
15 U.S.C. §§ 1114, 1125

30. Paragraphs 1-29 are incorporated herein by reference as though set forth in their entirety.

31. Exit Strategy is the owner of Federal Registration No. 4,873,566 for the word mark EXIT STRATEGY®. This mark was registered on December 22, 2015 in connection with entertainment in the nature of designing, arranging, organizing, conducting and hosting puzzle-solving and escape the room type games and providing facilities for recreational activities, namely, puzzle-solving and escape the room games in International Class 041 and has been used in commerce since at least as early as August 28, 2014.

32. Exit Strategy is the owner of Federal Registration No. 4,873,565 for the mark EXIT STRATEGY + Design. This mark was registered on December 22, 2015 in connection with entertainment in the nature of designing, arranging, organizing, conducting and hosting puzzle-solving and escape the room type games and providing facilities for recreational activities, namely, puzzle-solving and escape the room games in International Class 041 and has been used in commerce since at least as early as August 28, 2014.

33. Defendant, without consent from Exit Strategy, adopted, used and is currently using in commerce, the Infringing Mark, in connection with entertainment in the nature of designing, arranging, organizing, conducting and hosting puzzle-solving and escape the room type games and providing facilities for recreational activities, namely, puzzle-solving and escape the room games.

34. Exit Strategy has been damaged, and in the absence of relief from this Court, will continue to be damaged by Defendant's use of the Infringing Mark in connection with entertainment in the nature of designing, arranging, organizing, conducting and hosting puzzle-solving and escape the room type games and providing facilities for recreational activities, namely, puzzle-solving and escape the room games.

35. Use of the Infringing Mark in connection with the sale, offering for sale, and advertising of Defendant's services is likely to cause confusion, mistake or deception with respect to the source of the goods and services and therefore constitutes trademark infringement under Section 32 of the Lanham Act (15 U.S.C. § 1114(1)(a)).

36. Use of the Infringing Mark has, in fact, already caused actual confusion with respect to the source of the goods and services.

37. Defendant has used, and is using, in commerce, in connection with the sale, offer for sale, and advertising of services, the Infringing Mark in such a manner as is likely to cause confusion, or to cause mistake, deceive as to the affiliation, connection or association or as to the origin, or falsely designate the origin, sponsorship, or approval of the goods and services to consumers in violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)).

COUNT II – Breach of Contract

38. Paragraphs 1-37 are incorporated herein by reference as though set forth in their entirety.

39. On September 14, 2016, Exit Strategy demanded Defendant immediately cease and desist all infringing use of the EXIT STRATEGY® Mark.

40. On November 13, 2016, Exit Strategy entered into a contract with Defendant, pursuant to which Defendant agreed to cease all infringing use of the EXIT STRATEGY® Mark within four months, on or before March 13, 2017, and in consideration of this undertaking, Exit Strategy agreed not to pursue its claims of trademark infringement against Defendant.

41. Exit Strategy properly performed its obligations pursuant to the Agreement.

42. Defendant failed to cease all infringing use of the EXIT STRATEGY® Mark on or before March 13, 2017. In breach of the parties' Agreement, Defendant maintains infringing

use of the EXIT STRATEGY® Mark on at least its website, signage, sales through www.groupon.com, and social media, including on Facebook and Yelp, through at least the date of this Complaint.

43. Exit Strategy has demanded Defendant immediately cease all infringing use of the EXIT STRATEGY® Mark in compliance with the Agreement.

44. As a result of Defendant's material breach of the Agreement, Exit Strategy is entitled to recover its damages from Defendant's continuing infringement and equitable relief, plus interest, costs, and attorneys' fees.

COUNT II – North Carolina Unfair and Deceptive Trade Practices
N.C. Gen. Stat. § 75-1.1 *et seq*.

45. Paragraphs 1-44 are incorporated herein by reference as though set forth in their entirety.

46. Upon information and belief, Defendant had prior knowledge of Exit Strategy's trademark registrations and trademark rights in the EXIT STRATEGY® Mark before adoption and use as a trademark.

47. Upon information and belief, Defendant commenced and continued use of the Infringing Mark as a trademark with the intent to infringe the EXIT STRATEGY® Mark, or at a minimum was willfully blind to Exit Strategy's trademark rights in the EXIT STRATEGY® Mark.

48. The activities of Defendant as described in the foregoing paragraphs, and in each claim for relief asserted in this Complaint, constitute unfair methods of competition in or affecting commerce and/or unfair and deceptive acts or practices in or affecting commerce in North Carolina and have proximately caused and are proximately causing injury to Exit Strategy

in North Carolina. Thus, these activities violate the North Carolina statutory prohibition of unfair and deceptive trade practices. N.C. Gen. Stat. § 75-1.1 *et seq*.

49. By reason of the foregoing, Exit Strategy is entitled to recover from Defendant treble damages and reasonable attorney's fees, pursuant to N.C. Gen. Stat. § 75-16 and § 75-16.1.

COUNT III – North Carolina Trademark Infringement

50. Paragraphs 1-49 are incorporated herein by reference as though set forth in their entirety.

51. Exit Strategy is the owner of a pending application for a North Carolina state trademark registration for the mark EXIT STRATEGY in connection with entertainment in the nature of designing, arranging, organizing, conducting and hosting puzzle-solving and escape the room type games and providing facilities for recreational activities, namely, puzzle-solving and escape the room games.

52. The activities of Defendant as described in this Complaint constitute statutory trademark infringement of Exit Strategy's trademark rights in the EXIT STRATEGY® Mark in violation of N.C. Gen. Stat. § 80-11 and violation of N.C. Gen. Stat. § 75-1.1 *et seq*. in accordance with N.C. Gen. Stat. § 80-12.

53. Upon information and belief, Defendant adopted and continued use of the Infringing Mark with actual knowledge of Exit Strategy's prior rights in the EXIT STRATEGY® Mark, or was willfully blind to Exit Strategy's prior rights in the EXIT STRATEGY® Mark.

COUNT IV – North Carolina Common Law Unfair Competition

54. Paragraphs 1-53 are incorporated herein by reference as though set forth in their entirety.

55. The activities of Defendant as described in this Complaint are unfair acts that have damaged Exit Strategy's legitimate business activities. Therefore, those activities of Defendant constitute unfair competition and unfair and deceptive acts and practices in the State of North Carolina pursuant to the common law of North Carolina.

PRAYER FOR RELIEF

WHEREFORE, Exit Strategy respectfully prays for judgment against Defendant as follows:

A. That this Court permanently enjoin Defendant, their agents, servants, employees, and attorneys and all those in active concert or participation with Defendant;

   1) from using any trademark, service mark, logo, trade name, domain name or designation confusingly similar to the EXIT STRATEGY® Family of Mark owned by Exit Strategy;

   2) from otherwise infringing Exit Strategy's trademark rights;

   3) from unfairly competing with Exit Strategy; and

   4) from causing injury to the business reputation of Exit Strategy.

B. That Exit Strategy be awarded judgment for damages against Defendant resulting from their violation of Section 32(a) of the Lanham Act (15 U.S.C. § 1114(a)) and Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)), for federal trademark infringement and federal unfair competition, respectively, in an amount to be fixed by the Court, which in its discretion it finds just, including:

   1) all profits received by Defendant from sales and revenues of any kind as a result of the actions complained of in this Complaint;

2) all damages sustained by Exit Strategy as a result of Defendant's acts of infringement and unfair competition, and that such damages be trebled, including damages resulting from losses sustained by Exit Strategy equivalent to a reasonable royalty; and

3) monetary relief in the form of payments from Defendant to Exit Strategy to cover the costs of past or future corrective advertising;

C. That, because of the deliberate and willful actions of Defendant, this action be designated an exceptional case, thereby entitling Exit Strategy to an award of all reasonable attorneys' fees, costs, and disbursements incurred by Exit Strategy as a result of this action, pursuant to 15 U.S.C. § 1117, and that Exit Strategy be awarded such relief;

D. That Exit Strategy be awarded judgment for damages as a result of Defendant's breach of the parties' contract;

E. That Exit Strategy be awarded judgment for damages as a result of Defendant's unfair and deceptive trade practices and that those damages be trebled pursuant to N.C. Gen. Stat. § 75-16 and that Exit Strategy be awarded its reasonable attorneys' fees pursuant to N.C. Gen. Stat. § 75-16.1;

F. That Exit Strategy be awarded judgment for damages resulting from Defendant's common law unfair competition;

G. That Exit Strategy be awarded pre-judgment interest at the rate established under N.C. Gen. Stat. § 24-1;

H. That this Court award any and all relief not here enumerated that this Court deems just and equitable; and

I. That all triable issues of fact be brought before a jury.

This the 30th day of March, 2017.

Respectfully submitted,

/s/ Samuel A. Long, Jr.
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